

## WORK. DOC. No 71 E

**Special Commission on the International  
Recovery of Child Support and other  
Forms of Family Maintenance  
(4-15 April 2005)**

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### **Proposal of the Drafting Committee**

#### **WORKING DRAFT OF A CONVENTION ON THE INTERNATIONAL RECOVERY OF CHILD SUPPORT AND OTHER FORMS OF FAMILY MAINTENANCE**

[Note: Except where otherwise indicated, square brackets are used to signify text which is tentative or which deals with a matter which has not yet been fully considered by the Special Commission.]

#### **PREAMBLE**

The States signatory to the present Convention,

[Emphasising the importance of international administrative co-operation for the international recovery of child support and other forms of family maintenance,

Taking into account the *United Nations Convention on the Rights of the Child* of 20 November 1989, in particular Article 27,

Considering that every child should have a standard of living adequate for the child's physical, mental, spiritual, moral and social development,

Considering that both parents or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development,

Recalling that States should take all appropriate measures, including the conclusion of international agreements, to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, in particular, where the person having financial responsibility for the child lives in a State different from that of the child,

[Recognising the importance of other forms of family maintenance,]

[Recognising the importance of accountability,]

Desiring to build upon the best features of existing Conventions,

Seeking to take advantage of recent advances in technology and to create a flexible and efficient system, which can continue to evolve as needs change and further advances in information technology create new opportunities.]

## CHAPTER I – SCOPE AND DEFINITIONS

### **Article 1      *Objects***

The objects of the present Convention are –

- a) to establish a comprehensive system of co-operation between the authorities of the Contracting States for the international recovery of child support and other forms of family maintenance;
- b) to provide for the recognition and enforcement of maintenance decisions.

### **Article 2      *Scope***

1. This Convention shall apply to maintenance obligations in respect of a child [regardless of the marital status of the parents], as well as maintenance obligations arising from other family relationships, parentage, marriage or affinity.
2. The Convention shall also apply to claims by a public body for reimbursement of benefits provided in place of maintenance.
3. If a decision does not relate solely to a maintenance obligation, the effect of the Convention is limited to the parts of the decision which concern maintenance obligations.

### **Article 3      *Definitions***

For the purposes of this Convention –

- [a] ‘child’ includes as a minimum every person below the age of 18.]<sup>1</sup>
- b) ‘creditor’ means
  - i) an individual to whom maintenance is owed or is alleged to be owed; or
  - ii) a public body to which reimbursement is owed for benefits provided in place of maintenance.
- c) ‘debtor’ means an individual who owes or who is alleged to owe maintenance.
- [d] ‘legal assistance’ includes legal advice, assistance in bringing a case before an authority, legal representation and exemption from costs of proceedings.]

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<sup>1</sup> If this definition of ‘child’ is accepted it may not be necessary to include the definition in Article 41(2).

**Article 4      *Designation of Central Authorities***

1. A Contracting State shall, at the time when the instrument of ratification or accession is deposited, designate a Central Authority to discharge the duties that are imposed by the Convention on such an authority.

2. Federal States, States with more than one system of law or States having autonomous territorial units shall be free to appoint more than one Central Authority and shall specify the territorial or personal extent of their functions. Where a State has appointed more than one Central Authority, it shall designate the Central Authority to which any communication may be addressed for transmission to the appropriate Central Authority within that State.

3. The designation of the Central Authority or Central Authorities, their contact details, and where appropriate the extent of their functions as specified in paragraph 2, shall be communicated by each Contracting State to the Permanent Bureau of the Hague Conference on Private International Law. Contracting States shall promptly inform the Permanent Bureau of any changes.<sup>2</sup>

**Article 5      *Direct functions of Central Authorities***

Central Authorities shall –

- a) co-operate with each other and promote co-operation amongst the competent authorities in their States to achieve the purposes of the Convention;
- b) provide information to the Permanent Bureau as to the laws and procedures concerning maintenance obligations in their States;
- c) seek as far as possible solutions to difficulties which arise in the application of the Convention, in particular Chapters II and III.

**Article 6      *Other functions of Central Authorities***

1. Central Authorities shall provide assistance in relation to applications under Chapter III. In particular they shall –

- a) transmit and receive such applications;
  - b) initiate, or facilitate the institution of, proceedings in respect of such application.
2. In relation to such applications they shall take all appropriate measures –
- a) where the circumstances require, to provide or facilitate the provision of legal assistance;
  - b) to help locate the debtor;
  - c) to help to obtain relevant information concerning the income and other financial circumstances of the debtor or creditor, including the location of assets;
  - d) to encourage amicable solutions with a view to obtaining voluntary payment of maintenance, where suitable by use of mediation, conciliation or similar processes;
  - e) to facilitate the ongoing enforcement of maintenance decisions;
  - f) to facilitate the [collection and] expeditious transfer of maintenance payments;
  - g) to facilitate the obtaining of documentary or other evidence;
  - h) to provide assistance in establishing parentage where necessary for the recovery of maintenance;
  - [i) to initiate or facilitate the institution of proceedings to obtain any necessary provisional measures that are territorial in nature and the purpose of which is to secure the outcome of a pending or anticipated maintenance application;]

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<sup>2</sup> A further provision will be added requiring contact details for any other bodies which are designated under Article 6 to transmit or receive applications.

j) ...<sup>3</sup>

3. The functions of the Central Authority under this Article may, to the extent permitted under the law of that State, be performed by public bodies, or other bodies subject to the supervision of the competent authorities of that State. The term 'Central Authority' in subsequent provisions includes such bodies.

4. Nothing in this Article or Article 7 shall be interpreted as imposing an obligation on a Central Authority to exercise powers that can be exercised only by judicial authorities under the law of the requested State.

#### **Article 7      *Requests for specific measures***

1. A Central Authority may request another Central Authority to take appropriate specific measures under Article 6(2) *b), c), j)* and [...] when no application under Article 10 is pending. The requested Central Authority shall take such measures if satisfied that they are necessary to assist a potential applicant in determining whether an application under Article 10 should be initiated.

[2. A Central Authority may also take specific measures on the request of another Central Authority in relation to a case concerning the recovery of maintenance pending in the requesting State.]

#### **Article 8      *Central Authority costs***

1. Central Authorities shall not impose any charge on an applicant for the provision of their services, including the processing of applications under the Convention.

2. The principle set out in paragraph 1 shall be without prejudice to the possibility of imposing reasonable charges for services supplementary to those listed under Article 6(2).

3. The provision of assistance under the Convention by one Central Authority shall be without cost to any other Central Authority.

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<sup>3</sup> The proposal has been made (Work. Doc. No 46) to include the following additional paragraph: "to facilitate service of process". Debate on this proposal has not concluded.

**Article 9      *Application through Central Authority***

Where the assistance of a Central Authority is requested in relation to an application under this Chapter, that application shall be made through the Central Authority of the requesting State to the Central Authority of the requested State.

A requesting State is one in which the applicant has his or her [habitual] residence.

**Article 10      *Available applications***

1. A person<sup>4</sup> [habitually] resident in one Contracting State seeking to recover maintenance in another Contracting State may make application for any of the following –

- a) recognition or recognition and enforcement of a decision made in a Contracting State;
- b) enforcement of a decision made in the requested State;<sup>5</sup> and,

subject to the jurisdictional rules applicable in the requested State –

c) establishment of a decision in the requested State where there is no existing decision, including where necessary the establishment of parentage;

[d) establishment of a decision in the requested State where recognition and enforcement of a decision is not possible or is refused<sup>6</sup>;]

e) modification of a decision made in the requested State to the extent permissible under the law of that State;

f) modification of a decision made in a State other than the requested State to the extent permissible under the law of the requested State;<sup>7</sup>

g) recovery of arrears.

2. A person [habitually] resident in one Contracting State against whom there is an existing maintenance decision may make an application to another Contracting State, subject to the jurisdictional rules applicable in that State and Article 40, for any of the following –

a) modification of a decision made in the requested State to the extent permissible under the law of that State;

b) modification of a decision made in a State other than the requested State to the extent permissible under the law of the requested State.<sup>8</sup>

**Article 11      *Application contents***

***Option 1      (if no mandatory forms exist)***

1. All applications under Article 10 shall as a minimum include –

- a) the nature of the application or applications;
- b) the name and address of the applicant;<sup>9</sup>
- c) the name and, if known, address and date of birth of the respondent;

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<sup>4</sup> The term “person” in paragraphs 1 and 2 may be replaced by the terms “creditor” or “debtor”, as the case may be, if the definitions in Article 3 are accepted.

<sup>5</sup> There has been preliminary discussion of the question whether an application to enforce a decision in a requested State extends also to the enforcement of a decision made in a non-Contracting State which is entitled to recognition [or has been recognised] in the requested State.

<sup>6</sup> I.e. on the basis of lack of jurisdiction under Article 15 or on the basis of Article 17 b) or e).

<sup>7</sup> The Chair noted that one delegation expressed concern about this sub-paragraph.

<sup>8</sup> The Chair noted that one delegation expressed concern about this sub-paragraph.

<sup>9</sup> It may be appropriate to provide for confidentiality in relation to the address in certain exceptional cases.

- d) the name and the date of birth of any person for whom maintenance is sought;
  - e) the grounds upon which the application is based;
  - [f) save in an application made under Article 10(1) a), any information or document specified by declaration under Article ??? by the requested State].
2. As appropriate, and to the extent known, the application shall in addition in particular include –
- a) the financial circumstances of both the creditor and the debtor;
  - b) the name and address of the employer of the debtor;
  - c) the location and nature of the assets of the debtor.
3. The application shall be accompanied by any necessary supporting information or documentation. In the case of applications under Article 10(1) a), the application shall be accompanied only by documents listed under Article 18 *bis*.
4. An application under Article 10 may be made in the form recommended and published by the Hague Conference on Private International Law.

**Option 2 (if mandatory forms exist)**

- 1. Applications under Article 10 shall be in accordance with the forms annexed to this Convention and shall be accompanied by any necessary documents, without prejudice, save in relation to an application under Article 10(1) a), to the right of the requested State to require further information or documents in appropriate cases.
- 2. The forms annexed to this Convention may be amended by a decision of a Special Commission convoked by the Secretary General of the Hague Conference to which all Contracting States and all Member States shall be invited. Notice of the proposal to amend the forms shall be included in the agenda for the meeting.
- 3. Amendments adopted by a majority of the Contracting States present and voting at the Special Commission shall come into force for all Contracting States on the first day of the seventh calendar month after the date of their communication by the Secretary General to all Contracting States.
- 4. During the period provided for by paragraph 3 any Contracting State may by notification in writing to the Ministry of Foreign Affairs of the Kingdom of the Netherlands make a reservation with respect to the amendment. A Party making such reservation shall until the reservation is withdrawn be treated as a State not a Party to the present Convention with respect to that amendment.<sup>10</sup>

**Article 12 Transmission, receipt and processing of applications and cases through Central Authorities**

- [1. The Central Authority of the requesting State shall assist the applicant in ensuring that the application is accompanied by all the information and documents known by it to be necessary for consideration of the application.]<sup>11</sup>
- 2. The Central Authority of the requesting State shall, when satisfied that the application complies with the requirements of the Convention, transmit the application to the Central Authority of the requested State. The application shall be accompanied by the transmittal form set out in annex ??? to the Convention.
- 3. The requested Central Authority shall within six weeks from the date of receipt of the application, acknowledge receipt [in the form the content of which set out in annex ???] and inform the Central Authority of the requesting State what initial steps have been or will be taken to deal with the application and may request any further necessary documents and information. Within the same six-week period, the requested Central Authority shall provide to the requesting Central Authority the name and contact details of the person or unit responsible for responding to inquiries regarding the progress of the application.

<sup>10</sup> This option is inspired by Articles 5 and 28 of the *Convention of 25 October 1980 on International Access to Justice*. It is put forward by the Drafting Committee as an example of a provision which might be used if a decision is taken in favour of mandatory forms.

<sup>11</sup> This provision is inspired by Article 6 of the *Convention of 25 October 1980 on International Access to Justice*.

[4. Within 3 months after the acknowledgement, the requested Central Authority shall inform the requesting Central Authority of the status of the application.]

5. Requesting and requested Central Authorities shall –

a) keep each other informed of the person or unit responsible for a particular case;

b) keep each other informed of the progress of the case and provide timely responses to enquiries.

6. Central Authorities shall process a case as quickly as a proper consideration of the issues will allow.

7. Central Authorities shall employ the most rapid means of communication at their disposal.

[8. When it is manifest that the requirements of this Convention are not fulfilled [or that the application is otherwise without foundation,] a Central Authority is not bound to accept the application. In that case, the Central Authority shall promptly inform the applicant or the requesting Central Authority, as the case may be, of its reasons. The requested Central Authority may not reject an application solely on the basis that additional documentation or information is needed.]

### **Article 13      *Effective access to procedures***<sup>12</sup>

1. The requested State shall provide applicants with effective access to the procedures, including appeal procedures, arising from applications under Chapter III, where necessary by the provision of free legal assistance.

2. The requested State shall not be obliged to provide the legal assistance referred to in paragraph 1 where the procedures are designed to enable the applicant to make the case without the need for such assistance, and where the Central Authority provides such free services as are necessary.

3. The provision of free legal assistance may be made subject to a means or a merits test. A Contracting State may declare that it will provide free legal assistance in applications for child support on the basis of the assessment of the child's means only, or without any means test at all.

4. Entitlements to free legal assistance shall not be less than those available in equivalent domestic cases.

[5. A creditor, who in the State of origin has benefited from complete or partial legal aid or exemption from costs or expenses, shall be entitled, in any proceedings for recognition or enforcement, to benefit from the most favourable legal aid or the most extensive exemption from costs or expenses provided for by the law of the State addressed.]

6. No security, bond or deposit, however described, shall be required to guarantee the payment of costs and expenses in proceedings brought by a creditor under the Convention.

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<sup>12</sup> Consideration should be given to whether these provisions should apply (in whole or in part) to direct applications or to applications by public bodies.

**Article 14     *Scope of the Chapter***

1. This Chapter applies to a decision rendered by a judicial or administrative authority in respect of a maintenance obligation. Such decision includes a settlement or agreement concluded before or approved by such an authority. A decision may include automatic adjustment by indexation and a requirement to pay arrears[, retroactive maintenance] or interest.
2. For the purpose of paragraph 1, ‘administrative authority’ means a public body whose decisions, under the law of the State where it is established –
  - a) may be made subject of an appeal to or review by a judicial authority; and
  - b) have the same force and effect as a decision of a judicial authority on the same matter.
3. This Chapter also applies to authentic instruments and private agreements relating to a maintenance obligation.

**Article 15     *Bases for recognition and enforcement***

1. A decision made in one Contracting State (the State of origin) shall be recognised and enforced in other Contracting States if –
  - a) the respondent was [habitually] resident in the State of origin at the time proceedings were instituted;
  - b) the respondent has submitted to the jurisdiction either expressly or by defending on the merits of the case without objecting to the jurisdiction at the first available opportunity;
  - c) the creditor was [habitually] resident in the State of origin at the time proceedings were instituted;
  - [d) there has been agreement to the jurisdiction by the parties in writing or evidenced by writing; or
  - e) the decision was made by an authority exercising jurisdiction on a matter of personal status, unless that jurisdiction was based solely on the nationality of one of the parties.]<sup>13</sup>
2. A Contracting State may make a reservation in respect of paragraph 1 c)[, d), or e)].
3. A Contracting State making a reservation under paragraph 2 shall recognise and enforce a decision if its law would in similar [factual] circumstances confer or would have conferred jurisdiction on its authorities to make such a decision.
4. A Contracting State shall, if recognition of a decision is not possible as a result of a reservation under paragraph 2, and if the debtor is [habitually] resident in that State, take all appropriate measures to establish a decision. This paragraph does not apply to direct applications for recognition and enforcement under Article 26.<sup>14</sup>
5. A decision shall be recognised only if it has effect in the State of origin, and shall be enforced only if it is enforceable in the State of origin.

**Article 16     *Severability and partial recognition and enforcement***

1. If recognition or enforcement of a decision which deals with several issues is applied for, the State addressed, if unable to recognise or enforce the whole of the decision, shall recognise or enforce any severable part of the decision which can be so recognised or enforced.
2. Partial recognition or enforcement of a decision can always be applied for.

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<sup>13</sup> The proposal for an additional basis for recognition and enforcement in Working Document No 63 has yet to be discussed.

<sup>14</sup> The exact wording of this provision is still being considered by the Drafting Committee.

### **Article 17     *Grounds for refusing recognition and enforcement***

Recognition or enforcement of a decision may, however, be refused –

- a) if recognition or enforcement of the decision is manifestly incompatible with the public policy ("*ordre public*") of the State addressed;
- [b) if the decision was obtained by fraud in connection with a matter of procedure;]
- c) if proceedings between the same parties and having the same purpose are pending before an authority of the State addressed and those proceedings were the first to be instituted;
- d) if the decision is incompatible with a decision rendered between the same parties and having the same purpose, either in the State addressed or in another State, provided that this latter decision fulfils the conditions necessary for its recognition and enforcement in the State addressed;
- e) if the respondent did not have proper notice of the proceedings and an opportunity to be heard, unless the respondent had proper notice of the decision and the opportunity to challenge it; or
- f) if the decision was made in violation of Article 40.

### **Article 17 bis *Procedure on an application for recognition and enforcement***

[An application for recognition and enforcement may be made either through Central Authorities in accordance with Chapter III or directly to a competent Authority in the State addressed.] Subject to the provisions of this Chapter, the procedures for recognition and enforcement shall be governed by the law of the State addressed.

### **Article 18     *Application made through Central Authorities***

Where an Application has been made through Central Authorities in accordance with Chapter III, the following requirements apply –

- a) the requested Central Authority shall without delay determine whether the decision may be registered for enforcement or declared enforceable, or refer the application for determination by the competent authority;
- b) a declaration of enforceability or registration for enforcement may be refused only for the reasons specified in [Articles 15 and 17] [17 a)]. At this stage neither the applicant nor the person against whom enforcement is sought (the respondent) is entitled to make any submissions on the application;
- c) the applicant and the respondent shall be promptly notified of the determination made under paragraph a) and shall have the right to challenge or appeal [on fact or law] against the determination;
- d) a challenge or an appeal against a declaration of enforceability or registration for enforcement is to be lodged by the respondent within [...] days of notification of the decision. If the respondent is [habitually] resident in a Contracting State other than that in which the declaration or registration was made, the appeal shall be lodged within [...] days of notification;
- e) the only matters that may be considered [on an appeal by the respondent] are the following –
  - i) the grounds for refusing recognition and enforcement set out in Article 17;
  - ii) the bases for recognition and enforcement under Article 15;
  - iii) the fulfilment of the debt if the recognition and enforcement was only applied for in respect of payments that fell due in the past.
- [f) [further appeal may be permitted in accordance with the law of the State addressed] [further appeal is possible only if permitted by the law of the State addressed].]

### **Article 18 bis Documents**

An application for recognition and enforcement under Article 18 shall be accompanied by the following –

a) an original of the maintenance or a copy certified<sup>15</sup> by the competent authority in the State of origin;

#### **[Alternative proposal:**

a) an abstract of the decision certified by the competent authority in the State of origin in the form set out in Annex ...;]

b) a certificate from the competent authority in the State of origin that the decision is enforceable [and, in the case of a decision by an administrative authority, that the requirements of Article 14(2) are met];

[c) a certified or sworn statement showing the amount of any arrears and the date such amount was calculated;]

d) if the respondent did not enter an appearance in the proceedings in the State of origin, a document establishing that the conditions of Article 17 e) were met;

[e) where necessary, in the case of a decision providing for automatic adjustment by indexation, a document providing the information necessary to make the appropriate calculations.]

### **Article 19 Procedure on an application for recognition**

This Chapter shall apply *mutatis mutandis* to an application for recognition of a decision, save that the requirement of enforceability is replaced by the requirement that the decision has effect in the State of origin.

### **Article 20 More expeditious and effective system**

Any Contracting State may enter into agreements with one or more other Contracting States, with a view to creating a more expeditious and effective system for recognition and enforcement of decisions under this Convention, provided that such agreements are consistent with the objects and purpose of this Convention. The States which have concluded such an agreement shall transmit a copy to the Depositary of the Convention.

### **Article 21 Findings of fact**

The authority of the State addressed shall be bound by the findings of fact on which the authority of the State of origin based its jurisdiction.

### **Article 22 No review of the merits**

There shall be no review by the authority of the State addressed of the merits of a decision.

### **Article 23 Physical presence of the child or applicant**

[The physical presence of the child or applicant shall not be required in any proceedings in the requested State under this Chapter.]

### **[Article 24 Authentic instruments and private agreements**

1. An authentic instrument or a private agreement made in a Contracting State shall be recognised and enforced in other Contracting States as a decision in accordance with this Chapter, except that Articles 15, 18 *bis* and [...] shall not apply, and recognition or enforcement may be refused or challenged only if it would be manifestly incompatible with the public policy ("*ordre public*") of the State addressed.

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<sup>15</sup> The French equivalent of "certified" raised the question whether the certification should be by the originating authority or by some other competent authority.

2. An authentic instrument or a private agreement shall have the same force and effect as a judicial decision in the requested State if it has effect and is enforceable as a judicial decision in the State in which it was made.

3. An application for recognition and enforcement of an authentic instrument or a private agreement shall be accompanied by the following –

a) a copy of the authentic instrument or the private agreement certified as true by the competent authority of the State in which it was made;

b) a certificate from the competent authority in the requesting State that the particular authentic instrument or private agreement is enforceable as a judicial decision in the requesting State.]

**[Article 25 Costs]**<sup>16</sup>

#### **Article 26 Direct applications**

The provisions of this Chapter, with the exception of Articles [...] shall apply to an application for recognition and enforcement made directly to a competent authority in accordance with Article 17 *bis*.

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<sup>16</sup> Consideration may be given to including a provision relating to the enforcement of an order for costs. See for example, the proposal of the European Community in Working Document No 40: "An order for payment of costs based on a maintenance decision which is enforceable according to this Convention shall be rendered enforceable in any other Contracting State."

## CHAPTER V — ENFORCEMENT BY THE REQUESTED STATE

### **[Article 27    *Enforcement measures***

Contracting States shall take effective measures to enforce decisions under the Convention, by means such as –

- a) wage withholding;
- b) garnishment from bank accounts and other sources;
- c) deductions from social security payments;
- d) lien on or forced sale of property;
- e) tax refund withholding;
- f) withholding or attachment of pension benefits;
- g) credit bureau reporting;
- h) denial, suspension or revocation of various licenses (for example, driving licenses).]

### **Article 28    *Enforcement under national law***

Enforcement shall take place in accordance with the law of the requested State.

### **Article 29    *Non-discrimination***

Where a foreign decision is entitled to be recognised and enforced under the Convention, the requested State shall provide at least the same range of enforcement methods as are available in domestic cases.

### **Article 30    *Information concerning enforcement rules and procedures***

Contracting States, at the time of ratification or accession, shall provide the Permanent Bureau of the Hague Conference with a description of their enforcement rules and procedures, including any debtor protection rules. Such information shall be kept up-to-date by the Contracting States.

### **Article 31    *Transfer of funds***

1. States are encouraged to promote, including by means of bilateral or regional agreements, the use of the most cost-effective and efficient methods available to transfer funds payable as maintenance.
2. A Contracting State, under whose law the transfer of funds is restricted, shall accord the highest priority to the transfer of funds payable as maintenance or to cover costs and expenses in respect of any claim under this Convention.

**Article 32**

A decision rendered against a debtor on the application of a public body which claims reimbursement of benefits paid in place of maintenance shall be recognised and enforced in accordance with this Convention if reimbursement can be obtained by the public body under the law to which it is subject.

**Article 33**

A public body may seek recognition or claim enforcement of a decision rendered between a creditor and maintenance debtor to the extent of the benefits provided for the creditor if it is entitled *ipso jure*, under the law to which it is subject, to seek recognition or claim enforcement of the decision in place of the creditor.

**Article 33 bis**

Without prejudice to the provisions of Article 18 *bis*, the public body seeking recognition or claiming enforcement of a decision shall furnish any document necessary to prove that it fulfils the conditions of Article 32 or Article 33, and that benefits have been provided for the maintenance creditor.

**Article 34     *Language requirements***

1. Any application and related documents shall be in the original language, and shall be accompanied by a translation into an official language of the requested State [or in another language which the requested State has indicated, by way of Declaration in accordance with Article ???, it will accept], unless the competent authority of that State dispenses with translation.<sup>17</sup>

[2. In case of applications made under Chapter III, the Central Authorities may agree that the translation into an official language of the requested State may be made in the requested State from the original language or from any other agreed language. If no agreement can be reached and it is not possible for the requesting Central Authority to comply with the requirements of paragraph 1, then the application and related documents may be transmitted with translation into [French or English] for further translation into an official language of the requested State.]

3. The cost of translation arising from the application of the preceding paragraph shall be borne by the requesting State unless otherwise agreed by Central Authorities of the States concerned.

4. Unless otherwise agreed by the Central Authorities, any other communications between such Authorities shall be in an official language of the requested State or in either English or French. However, a Contracting State may, by making a reservation in accordance with Article ???, object to the use of either French or English.

**Article 35     *Costs recovery***

1. Recovery of any costs incurred in the application of this Convention shall not take precedence over the obligation to pay maintenance.<sup>18</sup>

2. ...<sup>19</sup>

**Article 36     *Legalisation***

All documents transmitted under this Convention shall be exempt from legalisation or any analogous formality.

**[Article 37     *Power of attorney***

A power of attorney authorising the Central Authority of the requested State to act on behalf of the applicant shall not be required.]

**Article 38     *Review of practical operation of the Convention***

The Secretary General of the Hague Conference on Private International Law shall at regular intervals convene a Special Commission in order to review the practical operation of the Convention and to encourage the development of good practices under the Convention.

For the purpose of such review Contracting States shall co-operate with the Permanent Bureau in the gathering of information, including statistics and case law, concerning the practical operation of the Convention.

**Article 39     *Uniform interpretation***

In the interpretation of this Convention, regard shall be had to its international character and to the need to promote uniformity in its application.

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<sup>17</sup> Note that this rule should also apply to direct applications, for example applications for recognition and enforcement not made through Central Authorities.

<sup>18</sup> Consideration should be given to the question whether this principle should apply only in respect of child support.

<sup>19</sup> Consideration should be given to the inclusion of a provision along the following lines "nothing in this Convention shall prevent the recovery of costs from an unsuccessful party".

**Article 40<sup>20</sup> Limit on proceedings by debtor**

1. Where a decision is made in a Contracting State where the creditor is [habitually] resident, the debtor may not bring proceedings for a new or modified decision in any other Contracting State as long as the creditor remains [habitually] resident in that State.
2. The previous paragraph shall not apply –
  - a) where there is agreement between the parties as to the jurisdiction of that other Contracting State in writing or evidenced in writing;<sup>21</sup>
  - b) where the creditor submits to the jurisdiction of that other Contracting State either expressly or by defending on the merits of the case without objecting to the jurisdiction at the first available opportunity; or,
  - c) where the competent authority in the State of origin cannot, or refuses to, exercise jurisdiction to modify the decision or make a new decision.

**Article 41 Reservation<sup>22</sup>**

1. Any Contracting State may in accordance with Article ???, reserve the right not to apply [the Convention, or] any specified part of the Convention,<sup>23</sup> to maintenance obligations in respect of any specified family relationships or relationships based on affinity, other than maintenance obligations in respect of children.
- [2. For the purpose of this Article the term 'child' includes as a minimum every person below the age of 18.]
- [or]
- [2. For the purpose of this Article a child is a person below the age of 18 [or in continuing education up to [...] years old or otherwise unable to support him or herself].]<sup>24</sup>

**Article 42 Bilateral / Regional arrangements<sup>25</sup>**

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<sup>20</sup>The Drafting Committee has yet to complete its work on this Article in the light of the discussions in the Special Commission.

<sup>21</sup> Certain delegations are of the view that there is a need to consider the relationship between this provision and Article 15(1) e).

<sup>22</sup> A provision on reciprocity remains to be drafted.

<sup>23</sup> A view was expressed in the Special Commission that no reservation should be permitted in relation to spousal support under Chapter IV.

<sup>24</sup> The issue of incapacitated persons raised by the Working Document No 65 has not been fully discussed by the Special Commission. Consideration should be given to Article 1 of the 2000 Hague Convention on the Protection of Adults which reads: '*This Convention applies to the protection in international situations of adults who, by reason of an impairment or insufficiency of their personal faculties, are not in a position to protect their interests*'.

<sup>25</sup> This would include the possibility of agreements for the provision of an advanced level of services.